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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/654,800	05/29/98	MIZELL R	5383

PM52/1119  
KERKAM STOWELL KONDRACKI AND CLARKE  
TWO SKYLINE PLACE  
SUITE 600  
5203 LEESBURG PIKE  
FALLS CHURCH VA 22041-3401

EXAMINER

ROWAN, K

ART UNIT PAPER NUMBER

3643

DATE MAILED: 11/19/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
08/654,600

Applicant(s)  
Mizell

Examiner  
Kurt Rowan

Group Art Unit  
3643



☒ Responsive to communication(s) filed on Sep 2, 1998

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 2-13 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 2-4, 6, and 8-13 is/are rejected.

☒ Claim(s) 5 and 7 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-4, 6, and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruddell in view of Brown.

The patents to Ruddell and Brown show insect traps having a bottom portion with first and second fins and a top portion comprised of a receptacle. Ruddell shows a bottom portion 24 with fins 30, 31 and receptacle 1, 2 with openings 4, 5. The surface of the first and second fins forms a channel which is directly exposed to the environment in which the target species is present.

Ruddell shows the fins on top of the receptacle in Fig. 1 but the top portion of the trap can be considered as the bottom and visa versa by merely inverting the drawing Figs. The first and second fins are wider at a base portion and narrower at a top portion which is located inside of receptacle 2. Ruddell discloses coloring the trap in lines 26-32 of page 1 to attract insects.

Ruddell does not disclose that the fins are colored, but it would have been obvious to color the fins also to attract insects since the entryway is adjacent to the fins. Brown shows a similar type of insect trap, but having a receptacle 1 with no openings except for the entrance opening.

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Ruddell discloses that openings 4, 5 are to ventilate the odors of dead beetles from the trap. In reference to claim 13, it would have been obvious to provide the trap of Ruddell with a receptacle as shown by Brown having only an entrance opening in the receptacle since merely substitution of one receptacle for another is contemplated. The odor from the dead beetles would ventilate from the opening in the funnel 24. One of ordinary skill in the art would have found it obvious to substitute an unventilated receptacle for a ventilated one since the function is the same. Also, no unexpected results are stated. In reference to claim 2, Ruddell discloses beetles as the target species and Brown discloses flies. However, the target species is a matter of choice and it would have been obvious to target stinkbugs or any other desired pest for capture. In reference to claim 3, Ruddell shows triangular fins. In reference to claim 4, Ruddell shows the angle between the fins as 90 degrees, but it would have been obvious to employ other angles such as in the range of 60 to 80 degrees since the function is the same and no showing of unexpected results was made. See *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980) and *In re Aller*, 105 USPQ 233. In reference to claim 6, Ruddell shows four triangular fins. In reference to claim 8, Ruddell does not show the height of the bottom portion being from about 30 to 120 cm. However, the exact size is a matter of design choice to be determined by routine experimentation. See, *In re Rose* 105 USPQ 237 (CCPA 1955). It would have been obvious to size the height of the bottom portion to be from about 30 cm to 120 cm. In reference to claim 9, Ruddell shows means 28 to anchor the apparatus to the ground. In reference to claim 10, Ruddell shows the exterior surfaces of the receptacle comprising the top portion being colored to reflect light having

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a wavelength which attracts insects. However, Brown discloses a clear (transparent) or translucent receptacle which appears to neither attract or repel the target species. In reference to claim 11, Brown shows the top portion 1 which admits ambient light into the interior of the chamber and onto the channel surface 10-11. In reference to claim 12, Ruddell shows a metal top portion 4, 5 and Brown shows a glass top portion 1. However, the material used for the top portion is a matter of design choice. It would have been obvious to use a screen. *See In re Leshin, 125 USPQ 416*. The examiner takes Judicial Notice that a trap having a screened top portion is old and well known.

#### ***Allowable Subject Matter***

3. Claims 5, 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 2-4, 6, 8-13 have been considered but are moot in view of the new ground(s) of rejection.

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*Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Guinotte, Goulard, Metzger, and Sladky show other insect traps.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (703) 308-2321.

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A handwritten signature in black ink that reads "Kurt Rowan". The signature is written in a cursive style with a long horizontal stroke at the end.

KURT ROWAN  
PRIMARY EXAMINER  
GROUP 32C0

KR

November 17, 1998